accordingly filled, but before the remainder were filled, the whole was burnt up. The court held, that those which were filled were the vendee's loss, those unfilled were the vendor's.

A distinction is to be taken between those cases in which the operation is to *precede*,[1] and those in which it is to succeed delivery.[2]

The question in these cases is not whether the vendor may resume his possession, but whether the property has ever passed from him; in other words, whether there is a *complete* contract.

G. G. W.

Boston, Mass.

RECENT AMERICAN DECISIONS.

In the Chancery Court of Memphis, Tennessee.

ALICIA ANN GAUGH ET AL. *vs.* WM. B. GREENLAWS ET AL.

1. A bill of review should be filed in the court where the original cause was heard, but the objection to the jurisdiction of another court is waived, if not taken by demurrer or plea.
2. A bill of review will not lie, unless there be error apparent in the body of the decree, without further examination; or new matter hath arisen in time after the decree, or new proof came to light after the decree made, which could not possibly have been used at the time the decree passed; and an infant defendant, if represented by a *guardian ad litem*, will be subject to this rule.
3. A voluntary conveyance (prior to the act of 1852,) could not be set aside as fraudulent against creditors, except at the suit of a creditor whose debt was ascertained by judgment.
4. If a father purchase land, and take the title in the name of his infant child, it is deemed in law an advancement, and no trust results to the father subject to execution at law; nor is the land liable for the subsequent debts of the father.

[1] Wallace *vs.* Breeds, 13 East, 522; Bush *vs.* Davis, 2 M. & S. 396; Shepley *vs.* Davis, 5 Taunt. 617; Hanson *vs.* Meyer, 6 East, 614. "If anything remaining to be done on the part of the seller before the commodity purchased is to be delivered, a complete present right of property has not attached in the buyer."—Lord Ellenborough. See Barrett *vs.* Goddard, 3 Mason, 111.

[2] But where the act of measuring, weighing, counting, &c., is to be done subsequently to the delivery, the sale is complete and the vendor's right is gone, even if such act is not performed. Swanwick *vs.* Sothern, 9 A. & E. 895; Macomber *vs.* Parker, 13 Pick. 175; Riddle *vs.* Varnum, 20 Pick. 280; Code Napoleon, 1586.

5. A valid judgment and execution must be shown by a party who seeks to support a title to land under a sheriff's deed for the same.
6. A purchase of land by a *guardian ad litem* of an infant defendant, pending a suit in chancery involving the title to the land, is champertous and void.
7. A decree in chancery obtained by fraud, is void, and a court of chancery upon original bill will set it aside, and restore the party defrauded to his former situation and rights.
8. Equity favors innocent purchasers without notice, who have paid a full consideration and taken conveyance for land; but where a purchaser has actual or constructive notice of an outstanding title, he will not be protected against it.
9. Whatever is sufficient to put a purchaser on inquiry is equal to notice, and he is bound at his peril to take notice of every deed, necessary to make out his title; and if his title deeds lead to facts disclosing an adverse title, the law charges him with knowledge of such facts.
10. A mortgage is not such an outstanding legal title as will repel an innocent purchaser without notice, the legal title is deemed to remain in the mortgagor.

The pleadings and facts are stated in the opinion of the court.

Yerger & Blythe, and *Wickerson & Beecher*, for complainants.

A. Wright, Smith & Stovall, Williams & McKissick, and *S. Bailey*, for defendants.

The opionion of the court was delivered by

DIXON, S. J.—The bill is filed in this cause by the complainants Gaugh and wife Alicia Ann, against the defendants Greenlaws and A. Henderson, to set aside and annul a decree rendered in the Chancery Court, at Somerville, in the year 1845. The bill is framed in the double aspect as a bill of review, and as an original bill to set aside the decree for fraud. It is alleged in the bill that sometime in the year 1840, the friends of the family of A. Kernahan purchased of H. L. Vance, a lot of ground in the city of Memphis, No. 358, and had the same deeded to the complainant Alicia, then an infant, five years old, that afterwards the same was levied upon and sold as the property of A. Kernahan, the father of Alicia Ann, by an execution at law, and that subsequently a decree was rendered erroneously and fraudulently, divesting the title out of Alicia and vesting the same in Andrew Henderson, the vendee of William Henderson, who purchased under the sheriff's sale. The defendant, A. Henderson, answers the bill, denies all fraud, charges

that the lot was purchased with the money of A. Kernahan, the father, and that the legal title in Alicia was a resulting trust, and as such subject to an execution at law against the father, relies upon the sheriff's deed and the decree at Somerville. The Greenlaws in their answer deny all knowledge of any fraud; charge that they are bona fide purchasers for a valuable consideration paid, without notice—deny the jurisdiction of the court to entertain the bill as a bill of review; upon which state of the case, as presented by the bill and answers, the cause is submitted. The first question to be considered is—Has the court jurisdiction of the cause as a bill of review? I was of opinion until the submission of the cause, that under no state of circumstances could a court of concurrent jurisdiction review the records and decrees of another, upon supposed errors of law; but on further investigation, I find the rule thus laid down:—"Where no circumstances can give the Chancery Court jurisdiction, it will not entertain the suit, even although the defendant does not object to its deciding on the subject; but when the defence intended to be made is that another court of equity has jurisdiction of the cause, it should be taken by demurrer, if it appears on the face of the bill; if it does not appear on the face of the bill, then by plea; for in some cases, if the objection is not thus taken *in limine* it will not avail the party to insist upon it at the hearing." Story's Equity Pld., sects. 487 and 488; Cooper's Equity, 160, 262.

In the manuscript opinion of the Supreme Court, *Anderson* vs. *Bank of Tennessee*, in which the decree was made as to the power of one Chancery Court to review the decrees of another, the question arose upon demurrer; and though I do not perceive the reason of the rule, it is sufficient that the law is thus written. Taking the jurisdiction of the court as being waived for want of demurrer or plea, does the matter contained in the bill present such a stat of facts as will bring the case within the rule laid down in the ordinance of Lord Bacon, which is thus stated;—"No bill of review shall be admitted except it contain either error in law, appearing in the body of the decree, without further examination of matters in fact, or some new matter which hath arisen in time after the decree,

and not any new proof which might have been used when the decree was made; nevertheless upon new proof that is come to light after the decree made and could not possibly have been used at the time the decree passed, a bill of review may be grounded by the special license of the court and not otherwise." 2 Bacon's Works, 479, 1st Ordinance.

It is not contended that the decree contains error in law, appearing in the body of the decree, and if it were contended for, I think it clearly settled in the case of *Whitmore* vs. *Johnson*, 10 Humphrey, where the court says:—"If the decree is regular on its face and complete in itself, embodying all the facts and every matter essential to establish the perfect right of the complainant in equity to the relief claimed, and likewise to show the jurisdiction of the court, in the particular case, to grant such relief, may be offered and used as evidence of title, or for any other purpose without the production of the bill, answer, or any other part of the record." The decree in this cause, I think comes up to the requirements of that decision in 10 Humph. But it has been argued with a good deal of earnestness, that the complainant, Alicia Ann, was a child at the time the decree was rendered, and did not and could not have known of the facts which were necessary to her defence, and which facts have come to her knowledge since the decree was rendered, and that consequently a bill of review will be entertained by the court. The argument is a good one as to her, if she had not had a guardian *ad litem*, to defend for her, and see that her interests were protected. But a guardian *ad litem* was appointed and appeared for her by answer—and I think from all the proof in the cause, the guardian had full knowledge of every fact, or could with ordinary diligence have procured it all upon which the decree is sought to be reviewed; for it may be truly said of him, of the proceedings in that suit—"all of which I saw, and the greater part of which I was"—and being thus represented and acting through her guardian *ad litem*, his knowledge, *quoad hoc*, was hers. I do not think, therefore, there is such error appearing in the body of the decree, without further examination, nor any new matter which has arisen in time after the decree; nor is there any new proof that

has come to light after the decree made, which could not possibly have been used at the time the decree passed, which could alone give the court power to review the same; and so far as the bill seeks review of the decree at Somerville, it will be dismissed.

As to the power of the court to entertain the bill as an original bill, to set aside the decree for fraud, no question is made, and that if the decree was obtained by fraud it is void, is conceded by counsel for defendants. The complainants allege that the property was bought with the money furnished by the friends of the family, and the deed directed to be made to Alicia Ann; if so, A. Kernahan had no rights on the property, either legal or equitable; aad further, they say, if the money was furnished by the father, and the deed made to the child, the law presumes it to be an advancement, and no trust results unless it is proved that it was made to hinder, and delay, and defraud creditors existing at the time of the conveyance. I take the law to be, and the rule is laid down with great clearness, as I think, in *Chute* vs. *Harder*, 1 Yerger. If A take a conveyance in the name of B, and his heirs, for land, the purchase money of which he has paid, the trust is extendible under the statute of Charles, for B is a trustee, and he is seized by the conveyance for A, the *cestui que trust;* but otherwise, where only a title-bond is given, and the trust estate springs out of the conveyance by deed, which is the seizure of the trustee by force of the statute, and an execution against A, will attach against the trust estate. The distinction, says the court, is well established between a covenant to convey, and a conveyance; a trust raised or springing by virtue of a conveyance, is subject to execution at law; but a trust raised or springing from a *covenant* to convey, is not subject to execution; the distinction is clear and definite, supported by reason and authority. It is essential to a resulting trust, that it should arise from some deed or conveyance. And the land may be sold, on an execution under a judgment against the cestui que trust. *Foote* vs. *Calvin*, 3 J. R. 216.

Was then the money furnished by A. Kernahan, the father? I do not think the proof is that way; but the weight of proof is entirely on the other side, except the testimony of Kernahan, whose

testimony, I think, was incompetent, and had the same been objected to, would have been excluded, for the reason that he was at the time he gave his deposition directly and manifestly interested in the event of the suit. On the 3d October, 1842, A. Kernahan having previously purchased the lot of William Henderson, deeds the same in trust to Seth Wheatley and J. R. Williams, to secure four notes due in one, two, three, and four years, for $500 each, and notwithstanding he afterwards, 23d June, 1843, conveyed the same to A. Henderson by quit claim, Henderson assuming to pay the notes. Would that release him from liability to pay them, if it should turn out he had no title to the land? I think not; in the case of *Galloway* vs. *Willie*, 2 Yerger, the court, after stating that the weight of authority was nearly if not quite equally balanced as to the admission or rejection of the evidence of a bargainor to prove his own acts void, decides that he is a competent witness where he is not repelled on the ground of interest in favor of the proposition he is called upon to support; but admitting him to be competent, there is no proof of the existence of indebtedness contemplated by the decisions of the State of Tennessee so as to make the deed to Alicia Ann void for fraud, the deed could only be void as to the creditors. Who are creditors? No one can be recognized as a creditor until he has established his right to claim in that character by a judgment at law, or a decree in Chancery. 5 Humphreys, 26, 66. The proof is, that Kernahan was indebted, but no judgment or decree, and no one seeking to subject the property, except creditors subsequent to the deed, and they could make no pretence to setting aside the deed unless it was made to defraud prior creditors. It has been held in Kentucky, *Crozier* vs. *Young*, 3 Monroe, 158, that where the title is made with the money of the father by a third party to the child, the deed is not fraudulent as to either prior or subsequent purchasers, and not subject to the father's debts. In the case of *Doyle* vs. *Sleeper*, 1 Dana, 560, the court decided that a purchase of property by the means of the father, and the deed made to the children, is fraudulent as to prior and good as to subsequent creditors. Where property is conveyed to a child, the presumption of law is, that it was an advancement,

and a subsequent purchaser will not be relieved. 1 Leading Cases in Equity, 195; *Dyer* vs. *Dyer*, 1 Meigs' Dig. 556.

But supposing there was a trust estate, and that the same was liable to execution under judgment against the father, there is nothing to show that a *venditioni exponas* ever issued, except the recitals in the sheriff's deed. Is that sufficient proof of the fact? I think not. The law presumes that an officer, clothed with proper authority, did his duty; and a return upon process, lawfully issued, is prima facie truth of the facts stated. But I think it would be going too far, to presume authority to sell a citizen's property, on the part of an officer, when the memorandum or records of the court show none, and so far as negative proof can do so, the recital in the deed is contradicted by the record, for the record, such as it is, if it proves anything, shows the venditioni exponas was issued on the 15th April, 1842, and the deed recites it as tested of the June term, 1842. Certainly an action of ejectment could not be maintained on such proof. See 2 Greenleaf's Ev. title Ejectment, sect. 316.

When a party sets up title to land under a sheriff's sale, it is incumbent for him to show a judgment rendered by a court of competent jurisdiction, and valid execution issued thereon, as well as to produce the sheriff's deed. Not to require the execution to be produced, is equivalent to deciding, that the judgment *per se* divests the title of the owner. Blackwell's Tax Titles, 96, and cases there referred to. The deposition of Topp shows, that the purchase was made by other parties than the father; the money was paid by Joseph Henderson, and the directions to make the deed to Alicia were made by Joseph and others, who had talked to Topp about it. Besides, Topp says that he regarded the lot as worth $500 or $600, and in consideration that it was to go to the wife and children, by contribution made by friends of the family, he considered that he was giving more than one quarter of the value of the lot for that purpose. McLean's testimony is confirmatory of the fact, for he says he contributed $10, and others in the lodge contributed for that purpose, either to buy a lot or build a house.

I do not think that there is sufficient proof to show power in the

sheriff to sell the estate, and if that were so, there was not such an estate in Andrew Kernahan to the lot 358, as was subject to execution at law, and the purchaser, W. Henderson, took nothing by the sale and deed, and that the legal estate remained in Alicia Ann up to the rendering the decree at Somerville.

The next question arising under the pleadings and proof, is as to the decree rendered at Somerville. 1st, Whether the same was obtained by fraud and collusion; and 2d, If it was so obtained, can the defendants in this cause protect themselves against its legal effect and consequences by their answer as bona fide purchasers for a valuable consideration paid without notice. The first question, depending almost entirely upon proof, I deem it necessary to recapitulate it. The bill was filed 4th of March, 1844. On same day Wm. Henderson, agent for complainant, makes oath before the deputy clerk that the defendant is an infant, has no regular guardian, and prays that John Delafield be appointed guardian *ad litem*. On the 7th of March, notice is directed to Delafield of his appointment as guardian *ad litem*. Delafield acknowledges service of process, March 12th, and answers on the 18th of March, 1844. The complainants object that these things are all irregular. I do not think so far as the appointment of the guardian, the service of process upon him and his answer, there is anything unusual or very irregular, and if there was nothing else in the record irregular, I should attach but little importance to them; but on the 15th of March, the infant is served with process—the replication is not filed till 3d of June, 1844, and the deposition of A. Kernahan is taken on the 19th of March.—Whether by consent or not does not appear, except by the testimony of Judge Bailey, who says the same was taken *de bene esse*, and that Delafield was present, wrote down the interrogatories, and the answer of the witness, all of which are leading, necessarily suggesting the answers to each one as they were answered, fully establishing the cause for the complainants, and no cross-interrogatories put to him to elicit any fact in favor of the infant, or to lead to any information by which a defence might be made for her. This under some circumstances might be regarded as ignorance or negligence, but upon examination we find that Delafield was a

lawyer, was partner of the attorney, Gallagher, originally employed to get the decree; was cognizant of the fact that Wm. Henderson had purchased the property at sheriff's sale on the 2d of October, 1842, and that Henderson had conveyed the lot to Kernahan on the 3d of October, 1844, and that Kernahan had on the same day conveyed the same to Wheatley and Williams, in trust, to secure the purchase money—for he witnessed them both, but on the 4th day of June, 1844, whilst the suit is pending, still acting as guardian *ad litem*, he purchased the property of Andrew Henderson, who had given Kernahan $750 advance on his purchase, and becomes the real plaintiff in the cause and holds the whole estate antagonistic to the infant, whose interest he readily and with avidity undertook, I may say, with indecent haste to guard and protect. Is this fair dealing? Is this just? In the eyes of the guardian *ad litem*, it may look like good morals and faithfully executing his trust, but in the language of an eminent chancellor, "good judges and good lawyers abhor such things." These facts connected with the facts as detailed by witnesses as to the habits and intoxication of Kernahan, his improvidence and the necessarily debilitated mind by which he came under the influence of Delafield, make it clear to my mind that the whole thing was gotten up for the purpose of fraudulently getting a decree against the infant and divesting her of the title, and that Kernahan was but a puppet in the hands of the guardian *ad litem*, to accomplish it. Great stress is laid upon the fact that Judge Bailey was present and took the deposition. I think that Judge Bailey was the last man that would have contributed or connived at a transaction fraudulent, and he is the last man to whom they would have given intimation of such an intention. He was the attorney for Henderson, and was of course anxious to have the interest of his client advanced, and readily accepted the service of the guardian *ad litem*, in taking the depositions, and I think it unfortunate for the interest of the infant that he was not employed for her, as she would now be standing in a very different attitude. Delafield not only purchases whilst guardian *ad litem*, but whilst the suit was pending. Will a court of equity recognize such a purchase? Is it

not champertous and void? The law is thus laid down in Bacon's Abridgment, title Champerty: the purchase of land pending a suit in equity is champerty.—Statute Edward I., ch. 15, 1 Eng. Stat.

I think the decree was obtained by fraud on the infant at Somerville, and where a decree has been obtained by fraud, the court will restore the parties to their former situation, whatever their rights may be, and it has been said, that "where an improper decree has been obtained against an infant, without actual fraud, it ought to be impeached by original bill."—Mitford's Equity Pleading, 93.

The last point that is presented for consideration, is on the answer of the defendants, the Greenlaws, that they are purchasers for a *bona fide valuable consideration paid* without notice, and that, although the decree may be void as to the defendants Henderson and Delafield, who had actual notice of the transaction, they are protected as such. I must confess, that I have had much difficulty on this point of the case, and do not feel free from fears as to the correctness of the conclusion to which I have come. The doctrine is unquestioned in all the books, that purchasers are favored in law, and courts of Equity always lean to the innocent purchaser for reasons of public policy, and where it can be done with safety to the rights of others, the law will protect a bona fide purchaser. That the defendants, who claim the legal title in the present case are innocent purchasers, so far as actual knowledge of the transaction, both their answers and the failure to fix that fact upon them by the complainants, fully prove. But a party may be an innocent purchaser so far as his personal knowledge goes, and yet the law may fix upon him what it terms a constructive notice or knowledge.

The doctrine is thus laid down by Lord Eldon, to a note in 2d volume, part 1, Leading Cases in Equity, page 46: "If a man buys an estate and a bill is filed and a title shown to relief, he may plead that he is a purchaser for a valuable consideration without notice, and he must support his plea by denying all the circumstances from which notice may be implied." And further on, at page 83, same book, "the plea must not only deny actual knowledge of the title, or incumbrance relied on by the plaintiff, but must deny all notice of its existence, which necessarily includes

technical or constructive, as well as actual notice. Notice being actual or implied, when anything appears which would put a man of ordinary prudence upon inquiry. The law presumes that such inquiry was actually made, and therefore fixes the notice upon him as to all legal consequences."

Whatever is sufficient to put a purchaser upon inquiry, amounts to notice. 1 Meigs' Dig. 246. Now, how do the parties defendants, here stand in relation to notice of legal or equitable title; if he begins at the foundation of the title, he finds it in Alicia Ann; the next step is the sheriff's deed, under a sale made in pursuance of a judgment against Andrew Kernahan; these are all matters of record, and necessarily brought to the purchaser's notice in tracing the muniments of title; he next finds a deed to A. Kernahan from the purchaser at sheriff's sale, and then again from A. Kernahan to A. Henderson, and from A. Henderson to J. Delafield, lis pendens, and whilst Delafield was acting as guardian ad litem to the infant. The defendant's counsel seem to rely a great deal upon the cases reported in 2 Leading Cases in Equity, part 1, page 64, as conclusively settling the doctrine, that if a party *believes* he is acquiring the legal title in his purchase, it will be protected by the court; the substance of the cases there laid down, is that a purchaser of the legal title in England takes it discharged of every trust in equity which does not appear on the face of the conveyance, and of which he has not had notice, actual or constructive, and that it is immaterial whether the title be legal or equitable, if the vendee suppose it to be legal. There is some confusion upon the subject of purchasers *bona fide*, growing out of the facts, that deeds are not registered in England and remain in the possession of the purchaser, which are easily explained by attending to the explanations and distinctions so satisfactorily made in the case of *Craig* vs. *Leeper*, 2 Yerger, 193. In England actual possession and occupancy is the seizin of the land, and is generally the best evidence of title; the deed being merely ancillary, not being registered, no constructive notice follows from its existence, but only actual notice, and where the vendor is in actual possession, the vendee may well believe that he is getting the legal title, and he is not

affected by any outstanding title, either legal or equitable by constructive notice. But in this country all the title papers are of record, and ordinary diligence can ascertain in whom the legal title is vested; and because it is in the reach of all, all are affected by its existence, and bound to take notice at their peril. A purchaser is bound to take notice of every deed necessary to make out his title, and if his title deed lead to facts, he is bound to know the fact. 1 Yerger, 360, *Nelson* vs. *Allen and Harris*; 2 Meigs' Dig. 786; 1 Johnson Ch. 575; 2 Daniell's Ch. 779.

The complainant's counsel have placed a good deal of stress upon the fact, that mortgages were given upon the property and were still upon it unsatisfied when defendants purchased, and arguing from thence that the defendants did not get the legal title; the defendants, in answer to that, claim the admissions in the bill that they were paid off. I do not think the circumstance of their existence, or their being paid off, cuts any figure in the present case, as the mortgagors are not claiming in this suit, not parties in any way, and hence it is of no importance to the complainant, she being neither injured or benefited by the existence or payment. The law upon this subject is so clearly and forcibly laid down in 1 Smith's Leading Cases, fifth American edition, page 662, notes to *Keech* vs. *Hall*, that I thought it but proper to transcribe the substance of it:

"Notwithstanding some earlier decisions, which look the other way, it is now settled throughout this country, that the *mortgagor* is vested with the incidents of both legal and equitable ownership, as it regards all persons, save the mortgagee and those claiming under him; and some have gone so far as to decide that the interest of the mortgagee after his death goes to his executor and not to the heirs. But whilst such is the law between the mortgagor and third persons, a different rule prevails in many parts of this country in regard to the mortgagee; who is held to have all the rights of other grantees in fee, subject to a condition which has not been performed." See also Story's Equity, sect. 57. So I really think with one of the counsel, that the mortgages in this case are but "umbras in aqua, vox et preterea nihil."

There is another fact in relation to these transactions, of which the defendants are bound to take notice, for it is of record: that the guardian ad litem purchased pendente lite, and the law clearly is, that it is champerty, and as such void. Champerty, in any action at law, seems to be agreed to be within the statutes of Edw. 1 and Henry 8, and the purchases of land pending a suit in equity concerning it, hath also been holden to be within it; also a lease for life or years, or a voluntary gift of land pending a plea, is as much within the statute as a purchase for money, and, as we have before seen, the same is void. 2 Bacon's Abridgt. 186. See also the case of *Jackson* vs. *Andrews*, 7 Wendell, 156, where it was decided that a purchase pending a suit concerning it, was champertous in the hands of *bona fide* purchasers, and absolutely void; and that possession under a void conveyance does not defeat the operation of a conveyance on the ground of being held adversely, for in such case the possession is not adverse. This decision was made under the statute of New York; but the statutes of Edw. 1 and Henry 8, I take it, are in force in Tennessee. Nicholson and Caruthers' Statutes of Tennessee, pages 437 and 438.

No one is more ready to act upon the maxims "omnia presumatur rite, et solemniter esse acta," and "res judicata pro veritate accipitur," both in the spirit and the letter, when the case is fairly presented, than I am, and nothing is brought to bear to remove that presumption; but I find the law laid down, that fraud vitiates trusts and corrupts every transaction into which it enters, whether acted in pais, or whether it enters into decrees and judgments.

The defendants rely upon the decision in the case in 4 Sneed, *Kernahan* vs. *Greenlaw*, as settling the case; I do not think that decision amounts to anything more than what has been decided often before, that a judgment or decree which is not void upon its face, cannot be attacked collaterally. 6 Humphreys, 444; 5 Humphreys, 319. The case in 2 Schoales and Lefroy 556, *Burnell* vs. *Haind*; the case of *Loyd* vs. *Johns*, 9 Vesey, 36; and also the case of *McCormack* vs. *McClure*, 6 Blackford 467, have been relied upon by counsel as conclusive against the rights sought by the bill in this cause. I have examined them with care and attention; the

two former decide, that a decree cannot be invalidated for mere irregularities, but both strongly intimate that if fraud had been shown the decrees would have been pronounced void and held for naught; the other was a case where a decree was rendered for certain land, and the person obtaining the decree was put into possession and sold the land to a *bona fide* purchaser for value before the decree was sought to be reversed; the title of the purchaser and those claiming under him was not affected by the subsequent reversal; the decree in that case was not attacked for fraud, and the question of course was not before the court.

In the case referred to by defendant's counsel, *Bassett* vs. *Nosworthy*, 2 Leading Cases in Equity, 65, the points decided were, that a purchaser *bona fide* without notice of defect in his title at the time of purchase, may lawfully buy in, a statute or mortgage, or any other incumbrance, and if he can defend himself at law by such incumbrances, bought in, his adversary shall never be aided in a court of equity, and that the title thus acquired was a good one, when no fraud or circumvention appeared in obtaining it. I take that to be good law, but there is no purchase in this case by the bona fide purchaser of incumbrances, and they stand entirely upon the sheriff's deed and the decree at Somerville. In the case of the forged will, the party loaning the money on the forged will protected himself by purchasing of a mortgagee, in whom was the legal estate so far as the purchaser had any notice, the court deciding no actual or constructive notice being given of payment of the mortgage, the law not requiring them to be recorded; but if the party had notice, he was not a bona fide purchaser, and consequently could not protect himself; see same, p. 70. The case of the commission of bankruptcy referred to, is not sufficiently full to determine the reasons given in the notes.

I have not been able to find a solitary case where a judgment or decree was obtained by fraud, but that the same was set aside, when fraud in obtaining it was shown. In *Sherville* vs. *Goodwyn*, 3 Humphreys, 430, it is laid down, a void judgment is no judgment, all persons acting under it are trespassers, and the case stands as if there had been no judgment at all.

In the case of *Kenedy* vs. *Daly*, 1 Schoales and Lefroy, the decree was set aside for fraud in obtaining it, though the defendant in the case was not an innocent purchaser. If a decree is void, it is a nullity as to both parties and all other persons, but if erroneous only, it has full effect till reversed or set aside.

Sales made under decrees which are erroneous, are in general valid, though the decree be afterwards reversed. 12 B. Monroe, *Medina's heirs* vs. *Medina*. Not so where the decree is void.

No one, I presume, will contend that a sale under a judgment or decree, void for want of jurisdiction, or because the party was dead against whom it was rendered, or that no process was served, would pass any title, either to the purchaser or any vendee under him. I can perceive no difference in the effect, though the manner of getting at the facts may be different. A judgment or decree rendered without jurisdiction by the court, may be collaterally attacked because it appears upon the face of the record. A decree or judgment procured by fraud, cannot be attacked generally collaterally because it does not appear upon the record. And under a void decree no one can protect themselves, except by long possession and acquiesence, which cannot be done in this case, as the complainant was an infant and is allowed three years by statute after coming of age, to show cause against the decree; and having commenced her action in that time,

The court will render a decree in conformity to the prayer of the bill.

NOTE.—This decree was affirmed by the Supreme Court of Tennessee, at April Term, 1859.